Supreme Court, U.S.
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No. 00-1073

In The

Supreme Court of the United States

OWASSO INDEPENDENT SCHOOL DISTRICT NO. I-011, a/k/a OWASSO PUBLIC SCHOOLS; DALE JOHNSON, individually and in his official capacity as Superintendent; LYNN JOHNSON, individually and in her official capacity as Assistant Superintendent; RICK THOMAS, individually and in his official capacity as Principal;

Petitioners,

v.

KRISTJA J. FALVO, as parent and next friend of her minor children, ELIZABETH PLETAN, PHILIP PLETAN, and ERICA PLETAN;

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

JOINT APPENDIX

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Order of the United States Court of Appeals for the Tenth Circuit filed October 4, 2000, denying petition for rehearing *en banc*, with dissenting opinion by Circuit Judge Kelly, joined by Circuit Judges Tacha, Baldock, and Brorby .....Petition for Certiorari, Appendix D

RELEVANT DOCKET ENTRIES

United States District Court
Northern District of Oklahoma

10/06/98	1	COMPLAINT (Summons issued); consent form sent (fee status: pd) [Date Entered: 10/07/98, By: jn]
		* * *
10/13/98	–	MINUTE ORDER: HRG set on Motion for TRO for 10:30 10/14/98 before Chief Judge Terry C. Kern (cc: all counsel) [Date Entered: 10/13/98, By: cs]
10/13/98	2	NOTICE AND COMBINED MOTION w/brf by plaintiff Kristja J. Falvo for temporary restraining order and for preliminary injunction (TRO/J) [Date Entered: 10/14/98, By: jn]
10/14/98	3	RESPONSE brf (in opposition) by defendants to pla's combined motion for temporary restraining order [2-1] and motion for preliminary injunction [2-2] [Date Entered: 10/14/98, By: jn]
10/14/98	–	MINUTES: TRO hearing held by Chief Judge Terry C. Kern; Pltfs to reply to Defts' response brief by 10/15/98 as to requirement under FERPA. Motion under advisement (TC-Rptr) [Date Entered 10/19/98, By: cs]
10/15/98	4	REPLY by plaintiff Kristja J. Falvo to dfdts' response to pla's motion for temporary restraining order [2-1] and preliminary injunction [2-2] [Date Entered: 10/16/98, By: sms]

10/15/98 5 SUPPLEMENTAL brf by school district defendants in opposition [3-1] to pla's combined motion for TRO and preliminary injunction [2-1], [2-2] [Date Entered: 10/16/98, By: sms]

10/15/98 6 APPENDIX by school district dfdts bo pla's combined motion for temporary restraining order and preliminary injunction [5-1] [Date Entered: 10/16/98, By: sms]

10/16/98 7 ORDER by Chief Judge Terry C. Kern denying pla's motion for temporary restraining order [2-1] and for preliminary injunction [2-2] (cc: all counsel) [Date Entered: 10/19/98, By: sms]

* * *

11/6/98 11 ANSWER and affirmative defenses by defendants Owasso Sch Dist I011, Dale Johnson, Lynn Johnson & Rick Thomas to complaint [1-1] [Date Entered: 11/9/98, By: sco]

* * *

12/16/98 – Transcript of TRO hrg before Chief Judge Terry C. Kern for 10/14/98 (C/R T. Copeland, 93 pgs.) [Date Entered: 12/17/98, By: lc]

* * *

02/03/99 16 MOTION by plaintiff Kristja J. Falvo for declaratory judgment, and for partial summary Judgment (C2J) [Date Entered: 02/03/99, By: sco]

02/03/99 17 BRIEF by plaintiff Kristja J. Falvo in support of motion for declaratory judgment

[16-1], of motion for partial summary judgment (C2J) [16-2] (oversized doc) [Date Entered: 02/03/99, By: cpo]

* * *

03/01/99 20 CROSS-MOTION by defendants for summary judgment [Date Entered: 03/02/99, By: sco]

03/01/99 21 RESPONSE (Combined Brief) by defendants to pltfs' motion for declaratory judgment [16-1] and partial summary judgment [16-2] . . . BRIEF by defendants in support of their cross-motion for summary judgment [20-1] [Date Entered: 03/02/99: sco]

* * *

03/29/99 24 REPLY by plaintiff Kristja J. Falvo to dfdts' response to pltf's motion for declaratory judgment [16-1] and partial summary judgment (CJ2) [16-2] [Date Entered: 03/30/99, By: sco]

04/12/99 25 REPLY by defendants to response to dfdts' cross-motion for summary judgment [20-1] [Date Entered: 04/13/99, By: sco]

* * *

04/26/99 27 ORDER by Chief Judge Terry C. Kern denying pltfs' motion for partial summary judgment [16-2]; granting dfdts' cross-motion for summary judgment [20-1]; and denying pltfs' motion for class certification [12-1] (cc: all counsel) [Date Entered: 04/27/99, By: sco]

04/26/99 28 JUDGMENT: by Chief Judge Terry C. Kern pursuant to order entered granting dfdts' motion for summary judgment [20-1]; jgm for dfdts Owasso Ind School, Dale Johnson, Lynn Johnson, Rick Thomas and Does 1-50 and against pltfs Kristja J. Falvo, Elizabeth Pletan, Philip Pletan & Erica Pletan (cc: all counsel) [Date Entered: 04/27/99, By: sco]

* * *

05/10/99 30 MOTION by plaintiff Kristja J. Falvo for reconsideration, and to clarify of Court's order & jgmt and brf in support [Date Entered: 05/11/99, By: lks]

05/25/99 31 RESPONSE by defendant Owasso Sch Dist I011, defendant Dale Johnson, defendant Lynn Johnson, defendant Rick Thomas to motion for reconsideration [30-1], to motion to clarify of Court's order & jgmt [30-2] [Date Entered: 05/25/99, By: lks]

05/27/99 32 REPLY by plaintiff Kristja J. Falvo to response to motion for reconsideration [30-1] [Date Entered: 05/27/99, By: lks]

06/02/99 33 ORDER by Chief Judge Terry C. Kern denying pltfs' motion for reconsideration [30-1] and clarification [30-2] (Entry Date 6/3/99) [Date Entered: 06/03/99, By: sco]

* * *

06/28/99 35 NOTICE OF APPEAL by p'aintiff Kristja J. Falvo from Dist. Court decision [33-1], 28-2] (cc: all counsel), fees pd, forms given, prelim roa faxed to 10th (Entry

Date, 6/28/99) [Date Entered: 06/28/99, By: am]

United States Court of Appeals for the Tenth Circuit

6/29/99 [1244892] Civil case docketed. Preliminary record filed. DATE RECEIVED: 6/28/99. Transcript order form due 7/9/99 for Terri Copeland pursuant to R.42.1. Docketing statement due 7/9/99 for Kristja J. Falvo. Notice of of appearances due 7/9/99 for Kristja J. Falvo and Owasso Sch Dist – I011. (as)

* * *

8/31/99 [1260975] Appellant's brief filed by Kristja J. Falvo. Original and 7 copies. c/s: y. Served on 8/30/99. Oral argument? y., Appendix filed. Original and 1 appendix copy. Appendix pages: 200.

Appellee/Respondent's brief due 10/4/99 for John Doe, for Rick Thomas, for Lynn Johnson, for Dale Johnson, for Owasso Sch Dist I011. (ccd)

* * *

10/18/99 [1272613] Appellee's brief filed by Owasso Sch Dist I011. Original and 7 copies. c/s: y. Served on 10/14/99 – Oral Argument? n. Appendix filed. Original and one appendix copy. Appendix pages: 335. Appellant's optional reply brief due 11/1/99 for Kristja J. Falvo. (as)

10/29/99 [1275553] Appellant's reply brief filed Kristja J. Falvo. Original and 7 copies. c/s: y (oac)

12/21/99	[1288261] Hearing set for March 2000 session, at Denver, Colorado. (sls)
3/6/00	[1306740] Case argued by attorneys Wilfred K. Wright for the appellant; Karen L. Long for the appellee, and submitted the Judges Lucero, McKay, Murphy. (hrs)
7/31/00	[1343464] Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part) and Remanded; Written, Signed, Published. Lucero; McKay, Murphy, authoring judge. [99-5130] (as)
	* * *
8/14/00	[1347287] Petition for rehearing en banc [99-5130]. filed by Owasso Sch Dist I011, Dale Johnson, Lynn Johnson, Rick Thomas, John Doe. submitted to panel. (bjv)
8/15/00	[1347608] Order filed by Judge(s) Lucero, McKay, Murphy – appellant's response to appellee's petition for rehearing en banc due 8/29/00 for Kristja J. Falvo. Parties served by mail. (bjv)
	* * *
8/29/00	[1351247] Appellant's response filed by Kristja J. Falvo [1347287] to the appellee's petition for rehearing en banc and submitted to court. Original and 14 copies. c/s: y. (as)
10/4/00	[1360503] Order filed by Judges Seymour, Tacha, Baldock, Brorby, Ebel, Kelly, Henry, Briscoe, Lucero, Murphy denying Petition for rehearing en banc. See published order of October 4, 2000 [1347287-1] (as)

10/4/00	[1360506] Published order filed by Judges Seymour, Tacha, Baldock, Brorby, Ebel, Kelly, Henry, Briscoe, Lucero and Murphy denying petition for rehearing en banc. A poll was requested. A majority of the active judges voted, however, to deny the request for en banc review. Judges Tacha, Baldock, Brorby and Kelly voted to grant the en banc suggestion. Although the rehearing is denied, the panel has determined that the July 31, 2000 opinion shall be amended. The original opinion is withdrawn and the amended opinion shall be filed forthwith. [99-5130] (as)
10/4/00	[1360511] Order filed by Judges Seymour, Tacha, Baldock, Brorby, Ebel, Kelly, Henry, Briscoe, Lucero, Murphy reopening appeal. See published order of 10/4/00. [99-5130] (as)
10/4/00	[1360512] Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part) and Remanded; Written, Signed, Published. Lucero; McKay; Murphy, authoring judge. (as)
	* * *
10/12/01	[1362460] Mandate issued. Mandate receipt due 11/13/00. (oac)
	* * *
1/8/01	[1383787] Petition for writ of certiorari filed on 1/2/01 by Owasso Sch Dist. I011, Dale Johnson, Lynn Johnson, Rick Thomas. Supreme Court Number 00-1073. (as)
6/29/01	[1427697] Supreme Court order dated 6/25/01 granting certiorari filed. (lg)

ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

KRISTJA J. FALVO, as parent and next friend of her minor children, ELIZABETH PLETAN, PHILIP PLETAN, PLETAN, and ERICA PLETAN; and on behalf of all others similarly situated,	)	No. 98-CV-765-K
Plaintiffs,	)	
v.	)	
OWASSO INDEPENDENT SCHOOL DISTRICT NO. I-011, a/k/a OWASSO PUBLIC SCHOOLS; et al.,	)	
Defendants.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HAD ON OCTOBER 14, 1998

TRO Hearing

BEFORE THE HONORABLE
TERRY C. KERN, CHIEF JUDGE

APPEARANCES:

For the Plaintiffs:
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* * *

[5] KRISTJA FALVO,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. Could you state your name for the record, please?

A. Kristja Falvo.

* * *

[9] Q. What were your children saying to you?

A. They were just telling me that – I would get their papers back, and they would have other students' names signed to them, and I would look at their papers to see if they were graded correctly, and I would ask why was this graded this particular way, and they would say, I don't know, so and so graded it, and so it's through discussion and talking to the children, also the meetings with the teachers.

Q. What harm, if any, are you concerned about that you've mentioned in your complaint filed with this Court?

A. I'm concerned about the fact that when people are requested to call out their grade, or even requested to – or even given the opportunity to take their grade up privately, the other students have awareness of that grade, and because [10] they do have awareness, they are singled out, and they can be picked on. They can have their test papers graded incorrectly.

Q. Ma'am, do you have any personal knowledge of any specific circumstances with regard to this and your children involved in this matter?

A. Yes, from what they have told me.

Q. Could you explain to the Court?

A. I have personal knowledge of tests that I have – well, do you want me to explain every child? I have three children.

Q. Start with one child at a time, ma'am.

A. Okay. Elizabeth, my oldest, is in eighth grade, and her concern has been the fact that there's a student in her class who doesn't like her, has made it very clear that he doesn't like her, and so he takes the opportunity to grade papers incorrectly and puts her on the spot.

She is required then to either go to the teacher, and, in her words, they tattle on the student, which she doesn't want to do because of peer pressure, and just accept the grade. She's in honors classes, and so the issue of calling out a good grade hasn't been a problem for her, but this has been another problem.

Philip is in seventh grade, and it's – I was – it has come to more of my attention with him, because he wants to be like every other student. Every student calls out their grade. He wants to be like every other student, so he calls [11] out his grade. Subsequently, many of his grades are low percentages, and at that time, then he's labeled stupid by students, and he's called names, and his – he feels bad about himself, and it's hard for him to go to school and learn because of that.

My daughter, Erica, who is in sixth grade is in honors classes. She's very concerned with right and wrong, and she's been asked on occasion by another student to change the grade.

In one case, a student got a 55 and the student asked her if she could change it to a 75, and she was torn, because she didn't know if she should keep it at 55 or

change it to a 75 for her friend. And so she was torn with making a decision like that.

* * *

[15] Do your children including Philip, Erica, and Elizabeth have one teacher all day long or do they have several teachers?

A. They have several teachers. They go from classroom to classroom.

Q. This practice that you're talking about, the exchange of papers, is this prevalent among all the teachers, or are there some teachers –

A. No, sir. There are some teachers that grade their own papers, and there are some teachers that have the children exchange papers. There are some teachers that have them only exchange maybe daily work. It's nothing that's concrete. It's from a teacher-to-teacher situation. It depends on how the teacher wants to run her classroom.

Q. In your belief, is it up to the teacher to decide how the papers are to be graded, if they're to be exchanged?

A. Yes, sir. That's my belief.

Q. You have a fourth child. What is the name of that fourth child?

A. Andrew.

Q. Andrew isn't mentioned in the lawsuit. Could you explain to the Court why that is?

A. He goes to an elementary school where there is – where the principal does speak to the teachers prior to class, at the beginning of the school year, and instills a rule that the [16] teachers will not have the students exchange papers. They can either grade their own paper, or the students will grade their paper.

Q. When you presented to the assistant superintendent and the superintendent your concerns, did you provide to them any solution to the problem?

A. My suggestion was to have the students grade their own papers. I believe that the student would then get immediate feedback on the answers they did wrong, and that that way my goal, along with all the teachers' goals is education and learning, and I just suggested that if it's too time consuming to grade papers, have the student grade their own paper. If they can, they could see what they did wrong, they could write in the right answer, they could use a red marking pen, or whatever they needed to do, and then they would learn that answer. And I would think that the goal would be to learn it, and so I was hoping for the educational outcome to be better that way.

* * *

[17] Q. (By Mr. Wright) Ms. Falvo, do you have an opinion or a belief as to whether the test results that your children take on a weekly and daily basis, if it is your belief that those would be considered or construed to be educational records?

A. I believe they would be. I would believe that if a teacher calls their grade out, and they put it in a grade

book, that that's part of my child's educational record. It goes into an average of their grades.

Q. Is that attached to a name?

A. Yes, sir. It's attached to their names. To – it's attached. They would get a grade average. It would be like Philip Pletan, and they call out the grade. It goes under the grade book under Philip Pletan. At the end of nine weeks at the end of the semester, I think that those grades would be averaged, although teachers have said, well, some grades go in the grade book and some don't.

I don't know which ones do, and I don't know if there's a way, unless you're in the classroom and watching the [18] grade book, if you can actually keep a record of which ones do and which ones don't. And so I don't have any guarantee that any grade or any average goes into the grade book. But I believe any grade that is called out has a potential to go into my son's, child's, my daughter's educational record.

* * *

CROSS-EXAMINATION

[19] BY MS. LONG:

Q. Good morning, Ms. Falvo. I want to ask you just a few questions regarding the testimony that you've given to the Court. First of all, this issue of whether this is an education record or not, I believe you mentioned that you don't know what ends up in the education record. Do the students who participate in grading other student's papers know what becomes a part of the education record or what doesn't become a part of that record?

A. The question is, is any grade that's called out, does any student know? Does any teacher know? It's up to the discretion of the teacher, and unless you have someone in that classroom knowing exactly what the teacher's writing down, the only person that would know would be the teacher. However, because so many grades are called out, and this is daily grades, this is test papers, it would be hard for me to believe that although my son calls out his grades, none of those papers, none of those grades would be a matter of educational record.

* * *

[20] Q. Isn't it the case that the most the students do is participate in perhaps the grading of daily work when that occurs under the direction of the teacher?

A. Well, there's no guideline, so it might be daily work for one teacher, it might be a major test. And I do have knowledge from my older daughter that they do exchange major test papers and exchange them and call them out in the eighth grade. So I would assume from that knowledge that that would go into the educational record if it's a major test.

Q. You're familiar with your receipt for Philip, for Elizabeth, for Erica of nine-week grade reports?

A. Yes.

Q. And you don't have any knowledge, do you, of the [21] individual grades for purposes of those nine-week grade reports being calculated by students in the class?

A. They're not calculated, they're called out by students in the class.

Q. But isn't it true that the grades that are called out are those grades on individual papers? Those students are not, are they, taking the accumulation of grades and compiling those for purposes of coming up with nine-week grade reports?

A. I would think that if you believe that a student is knowledgeable enough to grade a paper, and you always grade that person's paper behind you, and they always get a 50 or a 56, then I would assume that a student would assume that that person is going to get an F in their nine-week report, but that's just my assumption.

* * *

[23] THE COURT: Let me ask a question: Is there any pattern? Is it more prevalent in math classes; is it more prevalent in English classes?

THE WITNESS: I don't believe there's any pattern. It happens in English class; it happens in social studies classes; it happens in civics classes.

THE COURT: All right.

* * *

[24] Let me finish, please. At that time, she was embarrassed. She had to leave the class, because she was in tears. The next day I suggested she talk to the teacher and see if she could grade her own paper, a solution that I had requested. And she did speak to that teacher, and asked if she could grade her own paper. And after the teacher talked to her a little bit and asked our names, then she was granted that wish, but – on an individual basis from that teacher. However, she still feels pressure, because she's different from all the other kids now, and

so she's being pressured. She feels herself being pressured into letting the exchange go on again.

Q. As to Elizabeth, as to Erica, or as to Philip, was it your understanding that it's the same student who grades the student's paper in all instances?

A. What happens is it depends on the – each teacher has [25] their discretion. They can say exchange it with a neighbor, with a friend, so it depends on the seating assignment of the students.

Now, that seating assignment, again, is up to the discretion of the teacher. It can change every semester; it can change every nine weeks; it can change every two weeks, so there's no guarantee. There's no guideline as to who would be grading that paper.

Again, I believe sometimes when you have a student grade someone else's paper, it can be more time consuming because the student doesn't have a judgment.

One of my children, Philip, in particular, he had – he writes slower than the other students and didn't get the notes down like he was supposed to. And one of the worksheets he had needed definitions. And I help my children with their homework. We looked up the definitions in the back of the book, because they weren't in his notes.

Now, the definition, of course, was longer and more detailed than what the teacher had lectured. He wrote the definition that was in the back of the book. That student marked off his definitions, because they were not what the teacher had said they were. I believe that that student didn't have the judgment to differentiate between the

definition in the book and the abbreviated definition the teacher gave.

Now, my son, because I have talked to him a lot, went [26] up to the teacher and said, can you look at this? I think this is wrong. And the teacher did correct that. But I know that some students, and I can attest to that from speaking to other students, this is not – that they're afraid. They don't want to go up and say – and I think as a parent, if you're a parent, you know that sometimes children are afraid to go up, or they're just apprehensive to go up and say something was graded wrong.

Q. But do I understand that as to Philip, he went up and in that instance, he got it corrected?

A. Only because I'm encouraging him through this past year to go up. Only because I'm aware of the practice, and that I have been role-playing with him. My husband has been role playing with him, and we have been working, because of this issue, on a daily basis on how to handle situations like that. And I believe that I – if I had not role-played, if I had not encouraged him in the past to do this, he would accepted that.

* * *

[27] It doesn't bother me. I get hundred percents. But she told me that there is a student who grades her paper wrong on purpose. She knows of other students that do that, because they don't like them.

Q. Now, is it your understanding that every student who gets back a paper that's been graded by another student has the right to bring, much like Philip did, to the

attention of the teacher that they believe the student grading their paper did so improperly or inaccurately?

A. I understand that the student does have that right, and I believe the teachers would certainly embrace that right. What I am saying is, is many students – we're asking them to act as adults instead of sixth, seventh, and eighth graders. And if we get in the minds of sixth, seventh, and eighth graders, a lot of them don't have the self-confidence. A lot of them are too concerned with peer pressure to go up and question a paper, or they might look at it, and if the person grading the paper cannot differentiate between what a right answer and a wrong anger [sic] is, as an example would be that definition that was longer than the teacher's, I can only assume that there might be a student who cannot tell if that question was actually correct, and so they can assume that they got it wrong.

Q. Have you ever felt it necessary to convene a meeting of Elizabeth's teachers, whether last year or this year, to challenge the grading procedure used by her individual [28] teachers?

A. I have never spoken to Elizabeth's teachers about the grading system.

Q. How about Erica's teachers?

A. No, I let her talk to her English teacher, and I knew she was going into the Sixth Grade Center where that issue had already brought up – had already been brought up.

Q. And as I understood it, that matter was successfully resolved between Erica and her teacher; is that correct?

A. On that particular instance, but there's still a struggle that she goes through daily because she wants to be like the other children.

Q. And is this the struggle that you refer to as a consequence of her request and the granting of that request to grade her own paper?

A. Yes.

* * *

[29] The concern here is the reason parents – you might ask why other parents haven't complained. There is a stigma when you do go to school and complain to the teacher. You want your children to be liked. You want the teacher to like your child, and whether you want to admit it or not, there is – it comes down to the basic – you don't want to ruffle anyone's feathers because these children are there in school, and you don't want to make anyone angry.

And so a lot of parents have said, I don't want to – I don't want the teacher mad at my child, because they might not be given the benefit of the doubt next time. And so, no, I did not go to each teacher. I did not go to each principal with my complaint. I went to the administration, hoping that a [30] guideline could be administered to the whole school district so that every student would be given the same protection that I wanted my children to have.

Q. Have your children been retaliated at all against because of your complaints to the administration regarding the use of student-to-student grading?

A. Retaliated by who?

Q. By teachers.

A. By teachers?

Q. Yes.

A. Again, I was asked that by the news media, if I was afraid that the teachers would retaliate against my children, and my feeling was, I have respect for teachers. I believe that they are professionals. I have nothing against the teachers. I have something against the grading policy.

Q. Is it true that what you hope to achieve is not just a remedy in a particular instance involving Elizabeth or Eric [sic] or Philip, but what you want to achieve is that the Owasso School District cannot use students to grade papers under any circumstances?

A. My goal, as I requested, was to have the Owasso School District make a guideline where the student would grade their own paper, or the teacher grade the paper. The teacher brings the papers up and writes the grade down in the grade book in private. That was what my goal was.

[31] I have no problem with a student grading their own paper. I believe that that would be used as a learning tool. I believe that when you have another student exchange papers and someone else grades it, they might get that paper back sooner, but I can guarantee you, if you get a bad paper, if you get a 47 percent, at least in my personal experience, I am not the one that would go and look at my paper and say, gee, what did I get wrong? I would take that paper, and I would put it in my backpack, because seeing red marks all the way down my

paper would be too painful for me to look at. I would have to look at it later on for a test.

Q. Ms. Falvo, isn't it true that when you originally brought this complaint when Philip was in the Sixth Grade Center last year, that the school was most willing to ensure that Philip knew that he could privately report his grade?

A. The teachers would tell me that if Philip wants to, he can come up and report his grade. They did not say – but another student – here's what would happen, and this is what happens. Another student knows the answer, knows what he got, you're embarrassed because the only students that go up and report their grade, at least is what I've been told, the majority – I can't say only, because I don't believe in whole numbers, but the majority of students that go up and report their grade in private are the ones that are too embarrassed to call their grades out. So everyone already knows that they've gotten a [32] poor grade.

Also, you have a student sensing what he'd get. And I believe this is information I have been told by my students. Then they're all curious as to what they got. My daughter one time took a paper up, and this was only a 74 percent. She took a paper up to the teacher to have it submitted in private, and that was the whisper around her desk, what did she get, what did you get, Erica? It brought more curiosity.

And the point is, if grades – if students believe the grades are private, and the teacher keeps them private, then this curiosity of who got the bad grade would be eliminated also.

Q. Did Philip use the process that was available to him to confidentially report his grade?

A. Sometimes, sometimes he would.

Q. Are you aware of the practice that students are sometimes even looking over each other's shoulders to see what another student is getting?

A. Well, I think all students are very curious, because we make such an emphasis on grades. –

* * *

[43] Q. Do I understand correctly that the guideline, in fact, the only guideline that is acceptable to you is that teachers be prohibited from using students to grade daily papers?

A. Again, my guideline is to have their students grade their own papers on daily work. My guideline is to have those papers, grades be collected by the teachers so that they can record the paper, the grades in private instead of calling them out loud.

* * *

[47] Q. I have just one final question for you. Isn't it the case that with your three children, Elizabeth, with Erica, with Philip, in every instance where there have been student-to-student grading, your children have had the option, whether they exercised it or not, to privately report that grade to the teacher?

A. I would say that when my students first started, Philip first started the sixth grade, he didn't understand that he had that option. And it wasn't until several meetings afterwards that I understood he had that option. So I

had not – true, I cannot state for a fact that the teacher says if you don't want to call your grade out – I have no control over the fact of any teacher if they say do you want to call your grade out or bring it up. I cannot say that I was in that classroom.

What I can say is that when it was brought up, they were giving me that option. However, I cannot – my goal is for all students, not just mine. I just happen to be the type of person who talks and asks questions. I don't think every student has sometimes the ability. Again, I'm speaking for a lot of students. I'm for everybody in this. And if you don't know, if you – is there a guideline? Is there a guideline in [48] this school that says the teacher on the first day says you can call your grade out or you can bring your paper up? Is there a guideline that states that? I've never seen that. So I can't say that my child was given that opportunity. I can say that once we brought it up, the teacher said, well, he can do this.

Q. Well, certainly, by the end, or when you first brought it up in the sixth grade, that was made clear, right?

A. That's correct, but it's not good enough. I am – I don't want good enough. Okay, I want –

Q. Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. WRIGHT:

Q. Ms. Falvo, if you could finish your comment, please.

A. My situation is, I feel it is not – having no guidelines is a situation where it's not good enough. It's a situation where, if teachers are given particular guidelines, then there is some accountability, and the children, all children, will know what their rights are in the classroom then.

Q. You testified that your children have been harmed by this whole process; is that correct?

A. Yes, sir.

* * *

[49] Q. To the best of your knowledge, this grading practice of calling out the grades in class still exists at Owasso Public Schools?

A. Yes. I asked my children last night, and they said, yes, it does.

Q. In the Sixth Grade Center?

A. Yes.

Q. In the Seventh Grade Center?

A. Yes, sir.

Q. In the Eighth Grade Center?

A. Yes.

* * *

[51] RICK THOMAS,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. Would you state your name for the record, please?

A. Rick Thomas.

* * *

Q. Where are you employed?

A. Owasso Public Schools.

Q. And what is the scope of your employment at Owasso Public Schools?

A. I'm the principal at the Sixth Grade Center.

* * *

[53] Q. The grading practices of students exchanging papers at the Sixth Grade Center, does that occur?

A. Yes, sir.

Q. Do those students in those classrooms call out their grades?

A. Some students do call out their grades. Some students do bring them up to the front. It depends on the classroom. It depends on the teacher.

Q. So you as a principal do not have an overcall guideline for the teachers?

A. No, we don't. I feel like the teachers, their classroom – it's their classroom. They are professionals, and we allow them to make the rules in their classroom, as long as they follow certain guidelines by the school.

[54] Q. What are those guidelines?

A. As far as concerning the rules and stuff?

Q. You just mentioned the guidelines.

A. The guidelines of the school would be to not infringe upon anybody's right to privacy, which we give them the – that's why we give them the option. We do not make them come up to the front – or to say their grade out loud. We give them the option of going up and giving it to the teacher.

The rules, as far as rules in the classroom, each teacher sets their own rules. Obviously, you know, there's certain rules that are followed by the school. You know, you have five minutes in between class and those rules there, but that doesn't really have anything to do with what we're talking about here.

* * *

[59] CROSS-EXAMINATION

BY MS. LONG:

Q. I have just a few questions for you, Mr. Thomas. First of all, you heard the testimony earlier of Mrs. Falvo regarding some incident where her child, Philip, was ridiculed. Do you require – or do you recall any discussion related to any incident brought to your attention where there was some harm to Philip?

A. Only thing I remember is discussing basically the Sixth [60] Grade Center in general, children at this age, the things that would transact, the things that would go on in the hallway. There's only two specific things that I know of that I even had, you know, knowledge of that I had written down. One of them involving a bus incident with a young lady, and the other involving a notebook in a PE class.

* * *

[61] Q. Would you tell us, please, why do teachers elect to use, [62] on occasion, students to grade other students papers at all?

A. Well, I think there's several reasons as teachers that they do. I think the first reason, it would be so that they can get immediate feedback on that lesson. If I'm grading a paper in class, after I've graded the paper, through discussion of the right answer, wrong answer, as a teacher, I could enforce those answers to reinforce those answers.

They also do it to keep that person from changing their own answers or also sometimes if I'm grading my own paper, I won't notice things that I would notice on somebody else's paper.

Q. Is there any reason why teachers would not favor having students grade their own papers?

A. I guess the obvious reason would be if there were mistakes made, you know, which anybody would make – could make mistakes on them.

Q. Did any teachers report to you when the Falvos first indicated their opposition to the student-to-student grading that they had noticed Philip's experience of self-esteem problems or related problems connected with grading?

A. No. Actually, they reported just the opposite.

Q. How would you describe Philip's academic performance when he was in the sixth grade?

A. Philip was a – based on grades, he was a – you know, he had a few As, Bs, and a C. You know, that was the last part of [63] the school year. He was an average student. Worked hard. I think he worked hard to be an average student, but we have students who work hard to get to that point. I guess that pretty much answers that.

Q. How long have you been a principal with Owasso Schools?

A. I've been a principal two years; assistant principal for two years.

Q. And how long have you been associated with the Sixth Grade Center?

A. Sixth Grade Center, two years.

Q. Have you ever had any parent, other than the parent here today, report opposition to your student-to-student grading as it's been described today?

A. No, ma'am.

* * *

[63] REDIRECT EXAMINATION

* * *

[64] Q. (By Mr. Wright) You testified earlier that this opens the door for cheating if the students grades their open [sic] papers; is that correct?

A. Yes, it could, yes.

Q. Does it also open the door for cheating if another student grades another student's paper?

A. We would hope not.

Q. That wasn't the question. Does it open an opportunity for [65] another student grading another's paper to cheat?

A. If a student chooses, yes, I mean, they would have that opportunity at any time, if the student chooses to do so, yes.

Q. So the opportunity is there?

A. Yes.

Q. It is present?

A. (Witness nods head.)

Q. Do you ever have a problem with the teachers grading their own papers?

A. With the teachers grading their own papers?

Q. Yes.

A. Grading the students' papers?

Q. Yes.

A. Teachers make mistakes, too, yes. Is that – I mean, am I understanding –

Q. Do the teachers not have a problem with grading their own papers?

A. Do the teachers have a problem grading the students' papers?

Q. That's correct.

A. There could be problems, yes.

Q. What are those problems?

A. If I'm wanting immediate feedback from those papers, as a teacher, if I have 140 students and time doesn't permit me to grade those papers within that day, then I don't get immediate [66] feedback from that lesson. If I grade them two days later and hand the papers back two days later, and I've gone on to other lessons, I haven't got immediate feedback, so that would be the problem with teachers grading the papers that way, yes.

Q. Mr. Thomas, is there a distinction between immediate feedback when another child grades another's papers and when a child grades his own paper?

A. Be the same feedback.

Q. Be the same feedback; would it not?

A. Uh-huh.

* * *

[71] BY THE COURT:

Q. You indicated that you had communicated to the teachers the fact that students could come up and give their grades privately?

A. Yes, sir.

Q. When was this first communicated to the teachers?

A. I communicated that with the teachers at the first of the school year when we were going over just classroom procedures and things like that.

Q. First of which school year?

A. The first of last school year. I do it every year, at the beginning of the year in the teacher orientation.

Q. Do you know whether or not this is a practice of the school system? Is this done in every grade?

A. To my knowledge, I mean, I don't personally know. I would just assume that it is, because we talk about the right to privacy act and all that, and we discuss that in our principals' meetings. I can't say whether each principal goes back and does that, no.

Q. You've been either a principal or an assistant principal for four years?

A. Yes, sir.

[72] Q. And has this been discussed in your principals' meetings every year since you've been –

A. Yes, sir. As of –

Q. – an assistant?

A. Yes.

* * *

[73] Q. So in other grades, it could be that no mention is even made of whether or not students should be asked to give their grades out loud?

A. Yes.

* * *

[74] Q. And there seems to be – I haven't heard any differentiation between which tests the students are allowed to [75] grade, whether it be daily work, pop quizzes, chapter tests or nine-week tests. That all depends on the individual instructor?

A. Students do not grade nine weeks tests or semester tests.

Q. Is that a written guideline?

A. It's not written. It's told – I mean, as far as in writing, no, there's not.

Q. But it's understood, or at least you tell all of the teachers –

A. Yes.

Q. – that you direct that the students are not to grade nine-week tests?

A. Nine-week tests or semester tests.

Q. Or semester tests?

A. Teachers take those up, and they grade them.

Q. Thank you.

* * *

[76] BOBBY JOE COKE,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LONG:

Q. Mr. Coke, if you would state your full name for purposes of the record being made in this matter.

A. My name is Bobby Joe Coke.

Q. And –

THE COURT: Spell that last name, please.

A. C-O-K-E.

Q. (By Ms. Long) Are you employed, sir?

A. Yes, ma'am, I am.

Q. And who's your employer?

A. Owasso Public Schools.

Q. And how long have you been employed by Owasso Public Schools?

A. Twenty-four years.

Q. And what is your current position?

[77] A. I'm a principal of the Seventh Grade Center in Owasso.

* * *

[78] Q. You, I assume, heard the testimony of your colleague at the Sixth Grade Center, Mr. Thomas. Do you have anything to add to the reasons why teachers might use the student-to-student grading practice in their classrooms?

A. First of all, I agree with him, it gives immediate feedback. And with the number of students we have at

the [79] seventh grade, for instance, I have some teachers that have 140 students in a classroom, which I will admit is too many, but it would be virtually impossible for them to grade those papers, particularly in certain classes like math.

I mean, they're going to have a paper in there every single day. But grading those papers gives the student – he does his homework, he brings it to class, it's going to be graded, it's going to get immediate feedback. He knows how he did that day when he brings it back.

Q. What is the practice at the Seventh Grade Center with respect to calling out of grades following their grading?

A. I don't think there's any teacher there that's going to require a student to call out a grade. I believe that most of them will give the student the option to bring their grade to the front and report it, give it to the teacher so she can record it.

* * *

[80] Q. Did Philip, in all of his classes, have the option of privately reporting those grades?

A. Best of my knowledge, yes.

Q. And is it the case that a student is stigmatized, in your opinion, by walking up and confidentially reporting his grade to a teacher?

[81] A. No. I don't think they're stigmatized. I mean, there would be a lot of students that make good grades that bring them up simply because they want praise from their teacher.

* * *

Q. The practice that is utilized by teachers involving using students as grading, or as graders, would teachers or Owasso Schools suffer by having that practice eliminated?

A. Well, would the schools or the students suffer?

Q. Well, the students or the teachers.

A. I think if you did away with it, the students would suffer, simply because you're not going to cover as much [82] material as fast as you could if the students grade those papers, and you want to cover as much material as you can.

I think that's our job to do the best job and cover as much material in each class and be as efficient as we can. I think that's part of education.

* * *

[83] CROSS-EXAMINATION

BY MR. WRIGHT:

Q. Sir, you testified that you're aware of the facts of this case; is that correct?

A. I'm aware of some of the facts, yes.

* * *

[84] Q. You also talked about this practice of students grading others papers, and how it would in some way, shape, or form initiate a rapid coverage of material throughout the day; is that correct?

A. If we didn't do it, I don't think we would cover as much material in the classroom.

Q. Can you accomplish that same goal by the students grading their own paper?

A. You could probably accomplish the same goal, but you've got to keep in mind, I do not believe that students will honestly grade their own paper. Some will, but I would say, over a period of time they're going to realize that they – they won't do that.

Q. If they grade their own paper, do they hand it back to the teacher?

A. In most cases, yes, they are going to, as they do now when other students grade it. There's a lot of teachers that will take the paper after they grade it, they exchange it with students, they give it back to the student. This happens in most of the classrooms. They review those papers while the student has his own paper in his hands. They go over that. It's a learning process. They go over the paper, and this is [85] the problem, they can correct it when wrong.

If it is graded incorrectly, you write up to the top of the paper, this is the way I personally did it, and I have some teachers that do it this way, they write at the top, please, teacher, check number 14, I think it's right, before you record it. Sometimes they pass the papers up and give it to the teacher, she records it. That happens that way. Sometimes they are verbally given out, the scores.

Q. Your concern was to – this process of exchanging papers would somehow pick up the pace of the material that could be covered; is that correct?

A. I will say yes. You can get immediate feedback by grading those papers.

Q. Other students grading others papers?

A. That's true, because they're going to get their paper back very efficiently, very rapidly with a score or with the number right on it, or whatever.

Q. Which is faster, exchange – having students exchange papers, or just immediately having that student grade that one paper?

A. There probably wouldn't be much difference in time.

* * *

[86] Q. Do you have any teachers that grade the students' papers themselves, where the teacher is actually grading the paper?

A. Sure.

[87] Q. Okay.

A. Partially. They would try to grade most of them. Some of them grade most of them, yes.

Q. This exchange of papers, does it provide an opportunity for the other students to cheat?

A. There's always an opportunity for a student to cheat. If it's a homework assignment, they take it home. Mom could do it, dad could do it; they could get a girlfriend to do it. There's always opportunity to cheat.

Q. So what you're saying, either or, whether the student grades his own paper or whether they exchange the paper, the opportunity to cheat is there?

A. It is there, but I would think if the student grades his own paper, the opportunity would be greater.

Q. Okay. Thank you. You've testified that students would suffer because they're not covering as much material as they would if they weren't grading other papers; is that correct?

A. (No response.)

Q. How would the teacher suffer if she was to grade the students' papers?

A. If she was to grade all other papers?

Q. Uh-huh.

A. She would be overwhelmed. A lot of them would be overwhelmed. For instance, in math there's going to be a paper every day. If you had 140 students, how long is it going to [88] take you to grade them? A long time.

Q. You just testified –

THE COURT: Excuse me. Let's get this straight. Have you got any math teachers that have 140 students?

THE WITNESS: I believe I do, yes. I can't give you the name, but, yes.

THE COURT: Well, you're the principal. You should know, if anyone does.

THE WITNESS: I just filled out a report the other day. I had some teachers, I can't give you the specific names of them. I don't have that report with me, but there are some teachers that have that many.

THE COURT: In one class?

THE WITNESS: Well, I'm talking about in a seven period day.

THE COURT: Oh.

THE WITNESS: Total. Maybe I misled you. I'm sorry.

THE COURT: Okay.

THE WITNESS: But we have seven class periods with a total number of that.